

STATE OF MICHIGAN
COURT OF APPEALS

In re J. L. DURRAH, Minor.

UNPUBLISHED
December 10, 2020

No. 353040
Wayne Circuit Court
Family Division
LC No. 18-002073-NA

In re D. A. DORSETTE, Minor.

No. 353041
Wayne Circuit Court
Family Division
LC No. 17-001796-NA

Before: MURRAY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Respondent-father K. Durrah appeals as of right the trial court’s orders terminating his parental rights to his minor children, JD and DD, pursuant to MCL 712A.19b(3)(b)(i) (physical or sexual abuse by a parent), (j) (reasonable likelihood of harm if child returned), and (k)(ii) (parent’s abuse included criminal sexual conduct). We affirm.

I. BACKGROUND

This case arises from DD’s disclosure of respondent’s physical and sexual abuse in a 2018 Kid’s Talk Interview. DD began living with respondent in January 2018 at the age of 15, after her mother went to prison, and other friend and familial placements had failed. DD’s last contact with respondent before her 2018 placement occurred when she was approximately five years of age. DD’s younger brother, JD, had been in respondent’s care since he was approximately 6 months’ old, and was four-years-old when DD joined them.

In April 2018, respondent, JD and DD moved to a three-bedroom home in the city of Inkster. DD and JD both had their own bedrooms in this house. DD slept in her own room when guests stayed at the home. However, when only JD, DD, and respondent were in the home, respondent required DD to sleep in his bed with him. During her Kids’ Talk interview, DD told

the interviewer that respondent had digitally penetrated her vagina on five or six occasions. DD also reported that respondent repeatedly punched her in the stomach, slapped her across the face, hit her in the head, and threatened her with a knife. According to DD, as another source of discipline, defendant required her to strip naked. DD also reported having seen respondent push down JD and hit him with a belt. In November 2018, respondent ran away from home.

Respondent acknowledged to CPS that he had physically disciplined DD. He admitted hitting DD, including striking her in the head. Respondent also acknowledged that he and DD sometimes slept in the same bed, but that it was DD's idea. He denied any sexual abuse of DD or physical abuse of JD. In December 2018, petitioner filed permanent custody petitions seeking termination of respondent's parental rights to both DD and JD at the initial disposition.¹ In anticipation of the permanent custody hearing, respondent was evaluated by the Clinic for Child Study in April 2019. During the evaluation, respondent asserted that DD had lied about the physical and sexual abuse because she was angry with him after he "whipped" her for misbehaving at school.

Following a termination hearing, which included testimony from DD, the trial court terminated respondent's parental rights to both children. On appeal, respondent challenges the sufficiency of the evidence to support the statutory grounds for termination and whether termination of his parental rights was in the best interests of each child.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent challenges the trial court's findings that the statutory grounds for termination were established by clear and convincing evidence. We find no error in this regard.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹ The children's mothers, L. Dorsette and A. Amen-ra, were also involved in the lower court proceedings. The original petition relative to JD sought termination of Amen-Ra's parental rights at the initial disposition. However, as to Amen-ra only, petitioner agreed to simply seek temporary custody in exchange for Amen-ra entering a plea of admission. After accepting Amen-ra's plea, the trial court found grounds to assume jurisdiction of JD. Following adjudication, the matter immediately went to disposition and Amen-ra was ordered to comply with a parent-agency treatment plan. Regarding DD's mother, at the conclusion of the termination hearing, the court found statutory grounds to terminate Dorsett's parental rights. However, it concluded that termination of her parental rights would not be in DD's best interests.

The trial court terminated respondent's parental rights to his two children pursuant to MCL 712A.19b(3)(b)(i), (j), and (k)(ii), which permits termination of parental rights under the following circumstances:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

* * *

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

After reviewing the record, we conclude that the trial court did not err when it terminated respondent's parental rights under these grounds.

DD testified consistently with her Kid's Talk Interview that when there were no other adults in the home, respondent required her to sleep in his bed. She further testified that in the summer of 2018, respondent digitally penetrated her vagina on five or six occasions when she was 15 years old. She also stated that respondent made her strip naked as a form of "discipline". According to DD's trial testimony, respondent repeatedly punched her in the stomach, slapped her across the face, and hit her in the head. She also described respondent threatening her with a large knife that he kept under his bed. Respondent would point the knife at her neck, chest, and stomach, and then threaten to stab her with it. This abuse continued from April 2018 until DD ran away in November 2018. Respondent contends that DD was not credible and there was no other evidence to substantiate her testimony. However, the trial court found DD credible and in applying the clear-error standard, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich at 337.

There was also clear and convincing evidence to prove that a reasonable likelihood existed that the children would be harmed if returned to respondent's care. The trial court did not clearly err when it concluded that the children would be at risk of harm in respondent's custody. Respondent never took responsibility for his abusive actions. Indeed, he claimed that DD's accusations were false. He disparaged his own daughter and even suggested that it was her idea to sleep in his bed. Because respondent refused to acknowledge his misconduct, he was unlikely

to change his aberrant behaviors. Accordingly, the trial court did not clearly err by finding that termination of respondent's parental rights to DD was warranted under MCL 712A.19b(3)(b)(i), (j), and (k)(ii).

The trial court also did not clearly err when it terminated respondent's parental rights to JD based upon the evidence of physical abuse of DD as well as DD's testimony regarding respondent's behavior toward her sibling of the half-blood. Respondent neither acknowledged that his physical discipline of both children was excessive nor was remorseful for his actions against DD or JD. The trial court did not err when it concluded that JD would be at risk of harm in the future if returned to respondent's care. In this regard, the trial court applied the anticipatory-neglect doctrine. This doctrine recognizes that "how a parent treats one child is probative of how that parent may treat other children." *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (citation and quotation marks omitted).

Respondent contends that because there was no testimony that he harmed his son, there was insufficient evidence for the court to conclude that there was a reasonable likelihood that JD would suffer injury or abuse in the foreseeable future. He further contends that the trial court improperly relied on the anticipatory-neglect doctrine. In support of his position, respondent relies on *In re LaFrance*, 306 Mich App 713, 730-731; 858 NW2d 143 (2014), and *In re Kellogg*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349930); slip op at 5-6. However, a review of these decisions supports the trial court's application of the doctrine in this case.

In *LaFrance*, the respondents appealed the termination of their parental rights to four children. The petition did not allege any abuse or neglect in connection with the three older children, and no abuse or neglect was ever raised in the course of the proceedings. *In re LaFrance*, 306 Mich App at 715. Instead, the case involved the respondent-father's failure to recognize that the youngest child, a mere newborn, was severely ill with a virus. The trial court, when terminating the respondents' parental rights to the three oldest children, relied heavily on the doctrine of anticipatory neglect. *Id.* at 730. This Court found, however, that while the anticipatory-neglect doctrine can militate in favor of termination, under the unusual circumstance in that case, the doctrine had little relevance. *Id.* The court noted that there was no evidence that the respondents had ever abused or neglect any of their three older children. Further, the ages and medical conditions of the three older children stood in sharp contrast to the youngest child, who required special medical care. The Court noted that the infant's unique medical issues and the respondents' history of failing to recognize her needs "heightened the risk that respondents might again fail to appreciate the special needs and vulnerabilities of their infant daughter." *Id.* at 732. By contrast, however, the Court held "[b]ut because no special need or vulnerabilities exist in relation to the three older children, we conclude that the trial court erred by invoking anticipatory neglect to extend those concerns to them as well." *Id.* at 732.

Recently, in *In re Kellogg*, ___ Mich App at ___, slip op at 5-6, this Court revisited its holding in *In re LaFrance* when contemplating the application of the anticipatory-neglect doctrine during the adjudicative phase of that case. In *In re Kellogg*, the petition alleged that the respondent's harsh and inconsistent parenting of DF caused the child to live in a state of fear and anxiety. With regard to DF's sibling, JK, however, the petition only asserted that the respondent was verbally aggressive. Following a bench trial, the trial court found that there were statutory grounds to assume jurisdiction over both DF and JK. On appeal, the respondent argued, and this

Court agreed, that the trial court erred in taking jurisdiction over JK. This Court noted: “[t]he fact that there are statutory grounds to assume jurisdiction over one minor child does not automatically mean that there are statutory grounds to assume jurisdiction over a second minor child.” *Id.* at ____; slip op at 2. Moreover, “even though jurisdiction may be properly assumed on the basis of the anticipatory neglect doctrine, that does not also mean that it will always be sufficient.” *Id.* at ____; slip op at 5. Citing to its decision in *In re LaFrance*, this Court reiterated that “the probative value of such an inference is decreased by differences between the children, such as age and medical conditions.” *Id.*

The *In re Kellogg* Court identified the differences between the children in *In re LaFrance* case: “(1) the older children, whose ages ranged from five to twelve, had different needs than the infant that was neglected; and (2) that, unlike their infant sibling, the older children did not require special care for cerebral palsy.” *In re Kellogg*, ____ Mich App at ____; slip op at 5, citing *In re LaFrance*, 306 Mich App at 730-731. The Court in *In re Kellogg* then recognized the differences in the case before it:

Similarly, in this case, there are marked and significant differences between DF and JK that severely decrease the probative value of the anticipatory neglect doctrine. At the time of the adjudication trial, DF was 12 years’ old and had not been in respondent’s care between 2008 and 2017. JK was 3 years’ old and had always been in respondent’s care. JK had no history of trauma or behavioral issues. In contrast, DF had a long-history of trauma. He was removed from respondent’s care because of a “mental injury,” and he was placed with his father from 2008 until 2017. While with his father, he was subject to additional trauma. The exact nature of the additional trauma was undefined, but the caseworker indicated that there were allegations of physical and sexual abuse. Further, it was uncontroverted that DF had behavioral issues while in his father’s care and that those issues continued in his mother’s care. Because of his history of trauma and behavioral issues, DF had needs markedly different from JK’s needs. In addition, DF was diagnosed with attention deficient disorder, oppositional defiance disorder, and post-traumatic stress disorder. JK was not diagnosed with any mental-health disorders. Thus, DF required counseling; JK did not. Finally, and somewhat significantly, the caseworker testified expressly and repeatedly, that respondent did not treat the children the same. Instead, she showed “clear favoritism” toward JK. There was also testimony that she would provide validation to JK, was physically close to him, and generally had a significantly better bond with him than she had with DF. [*In re Kellogg*, ____ Mich App at ____; slip op at 5-6.]

Given the substantial differences between the two children, the Court in *In re Kellogg* concluded that the doctrine of anticipatory neglect was not sufficient to establish statutory grounds for jurisdiction in that case. *Id.* at ____; slip op at 6.

Considering the foregoing, this Court has clearly recognized that the probative value of the inference decreases when there are differences between the children. Applying that proposition to the present case, it would appear at first blush that many of the differences between the children in *In re Kellogg* are present in the instant case. However, a closer examination of the facts demonstrates that the children in the present case were, indeed, similarly situated. Although JD

was five years old at the time of termination and had mostly been in respondent's care since birth, DD had been living with them for almost two of those years. During those years, both children were subject to respondent's admitted instability. In fact, JD had endured years of instability. Respondent testified that when JD was approximately two years old, respondent suffered a breakdown. He lost his job and was hospitalized. After that, JD and respondent moved around, from home to home, and also a homeless shelter. Clearly, both children had lacked stability and consistency in their lives.

Further, while there was testimony that DD experienced emotional and mental health issues, there was also evidence that JD required treatment. The IMH therapist testified that she had been treating JD since June 2018. The child, because of his age, was going to be transitioning to a different individual therapist. Further, JD had recently exhibited escalating behavioral issues, which the therapist attributed to his instability and lack of consistency. Thus, both children had experienced not only an unstable home environment, but they both required continued mental health treatment.

More significantly, the evidence indicated that both children had been subject to physical assault by respondent to some degree. DD clearly articulated the abuse she endured. In addition, she testified that she saw respondent push, slap, and hit JD with a belt. Further, the record suggests that JD had begun to exhibit the same type of behavior that precipitated respondent's physical abuse of DD. Respondent testified that he whipped DD because she was disrespectful and acted out in school. By contrast, respondent claimed that he never struck JD with a belt or used any type of physical discipline because he "never had to." The credibility of this testimony is questionable. In any event, according to JD's therapist, he had started exhibiting behavioral issues. From this testimony, the trial could have reasonably concluded that JD would be at risk of harm in respondent's care. The court could have reasonably concluded that respondent would react to the onset of behavioral issues with JD in the same manner he "disciplined" DD. Accordingly, the trial court did not err when it relied, in part, on the anticipatory-neglect doctrine to conclude that JD would be at risk of harm in respondent's care.

Finally, there is no merit to respondent's argument that the trial court erred when it terminated his parental rights under MCL 712A.19b(3)(k)(ii) because he was never charged with criminal sexual conduct. Contrary to respondent's assertion, a parent need not be criminally charged or convicted of criminal sexual conduct for § 19b(3)(k)(ii) to apply. *In re Schadler*, 315 Mich App 406, 410; 890 NW2d 676 (2016).

III. BEST INTERESTS

Respondent also challenges the trial court's finding that termination of his parental rights was in the children's best interests. We find no error in this regard.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of the parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The court may consider several factors when deciding if termination of parental rights is in a child's best interests, including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a

foster home over the parent's home. *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). The court may also consider psychological evaluations, the child's age, continued involvement in domestic violence, and a parent's history. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). "With respect to the trial court's best-interest determination, we place our focus on the child rather than the parent." *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). Whether termination of parental rights is in a child's best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews for clear error a trial court's finding that termination of parental rights is in a child's best interests. *In re Jones*, 286 Mich App at 129.

The trial court did not clearly err when it found that termination of respondent's parental rights was in the children's best interests. More than a preponderance of the evidence established that respondent was unable to provide a safe and stable home environment for the children. The evidence indicated that respondent sexually and physically abused his teenage daughter, and had an extensive history of instability, including failure to provide a stable home for his children.

Respondent also failed to meet DD's emotional and mental health needs. Respondent testified that when DD first came into his care, he recognized that she needed help. Initially, he took her to the Children's Center where she received therapy. However, DD was not able to continue or complete her therapy because when the family moved from the shelter into the Inkster home, respondent lacked transportation to get her to the appointments. There was no indication that respondent advocated for DD's needs. Consequently, her mental health issues went untreated.

DD's testimony was particularly compelling as it related to her own best interests. At the time of termination, DD was 16 years old. She testified that she did not want to live with respondent and that she believed his parental rights should be terminated. DD expressed the concern that she would not feel safe in respondent's care. DD attributed her suicidal thoughts, in part, to her relationship with respondent. Indeed, respondent acknowledged that it probably was not in DD's best interests to be returned to his care.

Notwithstanding the foregoing, respondent asserts first that the trial court failed to consider the interests of his two children separately. While it is true that a trial court has a duty to decide the best interests of each child individually, *In re Olive/Metts*, 297 Mich App 42, there is no indication that the trial court failed in this endeavor. The trial court primarily considered the sexual and physical abuse of DD and the implications of that abuse. The fact that the court considered the same factual events as they related to JD's best interests does not demonstrate a failure to consider the needs of each child separately, particularly because the abuse of one child necessarily impacts a sibling. Respondent's behavior will have a profound effect on both children. DD will clearly suffer the long-term consequences of that abuse. JD will have to process that he was removed from respondent's care because his sister was the victim of abuse at respondent's hand. Both of the children were directly and indirectly made victims of respondent's abuse of DD. See, e.g., *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115(2011).

Respondent also argues that the trial court failed to consider that JD was placed with his paternal grandmother. While it is true that placement with a relative weighs against termination, and the fact that a child is living with relatives must be considered, *In re Olive/Metts*, 297 Mich App at 43, there is no record support for respondent's representation that JD was placed with his

grandmother. On the contrary, the record indicates that JD was moved from his grandmother's home in 2019 and placed in a licensed foster home.

Respondent also asserts that the bond he shared with JD militated against termination of his parental rights to this child. He strongly relies on the opinion of the IMH therapist. However, it is clear from the record that the trial court did not find the opinion of the therapist particularly compelling. The court recognized that with regard to JD, the IMH therapist opined that termination of respondent's parental rights was not in JD's best interests. The therapist noted that a bond existed between respondent and JD, that parenting time went well, that respondent acted appropriately with JD, and that JD was always excited to see respondent. The therapist also concluded that JD needed stability and consistency and, according to the therapist, respondent had provided this to him in the past. However, the therapist did not acknowledge respondent's history of chronic housing instability. She also did not consider DD's accusations or the possibility that they were credible. Indeed, this therapist admitted that she never talked to respondent about the allegations in the petition and she did not specifically speak to him about his parenting of DD or her allegations of abuse. When asked if she was aware of DD's allegations, the therapist admitted that other individuals had told her. At most, when asked if it would have been beneficial for her to have delved into the allegations in the petition, the therapist would only admit that "[t]hat information could have been clinically appropriate in our discussion of him as a parent to [JD] as well, yes." Even when asked if her opinion would change if she believed that respondent had sexually abused DD, the therapist steadfastly clung to her recommendation that termination of respondent's parental rights would not be in JD's best interests. Considering the therapist's failure to evaluate the nature of the relationship between respondent and DD when considering JD's best interests, the trial court was justified in discounting the therapist's opinion, or outright rejecting it, when considering JD's best interests.

Based on the foregoing record, the trial court did not clearly err when evaluating the children's needs. A preponderance of the evidence supports the trial court's finding that termination of respondent's parental rights was in each child's best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ Kirsten Frank Kelly

/s/ Cynthia Diane Stephens